

1 DISTRICT COURT JUDGE THOMAS S. ZILLY
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,) NO. CR 05-289 Z
Plaintiff,) ORDER GRANTING DEFENSE
vs.) MOTION TO COMPEL EXAMINATION
ELMER JAY CLARK,) AND PRODUCTION OF PERSONNEL
Defendant.) AND EMPLOYMENT FILES OF
) TESTIFYING AGENTS AND
) GOVERNMENT EMPLOYEES
)

)

THE COURT having considered the motion to compel the government to examine the personnel files of all government agents and employees who the government intends to call as witnesses in this case, any and all supporting documents, the memoranda filed in response by the government, arguments of counsel and the records and files herein, the Court hereby makes the following findings:

1. Under *Brady v. Maryland*, 373 U.S. 83 (1963), the government must disclose all exculpatory evidence in its possession, including any evidence that may cast doubt on the credibility of its witnesses.

2. Under *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991), the government has a duty, upon defendant's request for production, to inspect for material information the personnel records of federal law enforcement officers who will testify at trial, regardless of whether the defense has made a showing of materiality. Following examination of such files by the

(PROPOSED) ORDER GRANTING
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(Elmer Clark; #05-289Z)

1 government, any information contained in them which is material to a fair trial must be produced
2 to the defense.

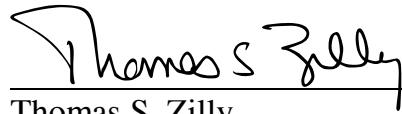
3 3. The Court further finds that the defense has timely requested production of material
4 information from the personnel and employment files of any and all law enforcement officers
5 who will testify at trial. However, to date, the government has failed to conduct the requisite
6 examination of those files. Thus, the ends of justice will be served by ordering the government
7 to examine the personnel and employment files of all law enforcement agents and/or employees
8 who will testify.

9 IT IS THEREFORE ORDERED that the government representative(s) shall examine all
10 personnel and employment files of testifying law enforcement officers in this case.

11 IT IS FURTHER ORDERED that upon the completion of such examination, the
12 government shall disclose to the defense all information that is material to the preparation fo the
13 defense or the adjudication of the issues at trial no later than November 17, 2005.

14 IT IS FURTHER ORDERED that the government shall prepare a report to the Court
15 indicating that such examination has been completed, or indicating that such examination has not
16 been completed and the reasons for its failure to do so no later than November 17, 2005.

17 DONE this 10th day of November, 2005.

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19 _____
20 Thomas S. Zilly
United States District Judge

21 Presented by:
22 s/ Jennifer E. Wellman
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24 Attorney for Elmer Jay Clark
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